

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

**BUILDING CODE APPEALS BOARD
DOCKET NO.: 11-1005**

Paul Scarlett,
Town of Grafton
Appellant

v.

Town of Grafton,
Appellees

BOARD'S RULING ON APPEAL

Introduction

This matter came before the State Building Code Appeals Board ("Board") on appellant's appeal filed pursuant to G.L. c.143, §100 and 780 CMR 122.1. In accordance with 780 CMR 122.3 the appellant petitioned the Board to make a determination based on the Seventh Edition of the Massachusetts State Building Code ("Code"). For the following reasons, the appellant will be granted a variance from the Code's nonseparated uses requirement.

The appellant requested that the Board grant a variance allowing a four-story building to be used for assembly purposes. Robert Berger, Building Official, appeared on behalf of the appellee. Paul Scarlett, project representative, and Neil Dixon, project architect, appeared on behalf of the appellant. All witnesses were duly sworn.

Procedural History

The Board convened a public hearing on June 2, 2011, in accordance with G.L. c. 30A, §11 and 801 CMR 1.02. All interested parties were provided with an opportunity to testify and present evidence to the Board.

Findings of Fact

The Board bases the following findings upon the testimony presented at the hearing. There is substantial evidence to support the following findings:

1. The property at issue is located at 1 Grafton Common, Grafton, MA.
2. The property at issue is a historical building and for over 100 years served as the Grafton Town Hall.
3. The property at issue was constructed in 1862 and is considered four stories high, including the basement as a floor.
4. The property at issue is undergoing restoration, which is being funded primarily by private donations.
5. The subject of the appeal is in regards to the proposed assembly use of the second floor Main Hall and third floor balcony.

Analysis

A. Jurisdiction of the Board

There is no question that the Board has jurisdiction to hear this case. The governing statute provides that:

Whoever is aggrieved by an interpretation, order, requirement, direction or failure to act by any state or local agency or any person or state or local agency charged with the administration or enforcement of the state building code or any of its rules and regulations, except any specialized codes as described in section ninety-six, may within forty-five days after the service of notice thereof appeal from such interpretation, order, requirement, direction, or failure to act to the appeals board. G.L. c.143, §100.

The issues giving rise to this matter directly implicate provisions of the Code. As such, this Board has jurisdiction to decide this case pursuant to G.L. c. 143, §100.

B. State Building Code requirements

The issue in this case is whether the appellant shall be granted a variance from the Code's nonseparated uses requirement, including the automatic sprinkler system increase in Section 504.2 of the Code. According to Section 302.3.1 of 780 CMR, "The required type of construction for the building shall be determined by applying the height and area limitations for each of the applicable occupancies to the entire building. The most restrictive type of construction, so determined, shall apply to the entire building." In this instance, the assembly use is the most restrictive, only allowing such use in a two story building. Section 504.2 of the Code allows for a one story increase for fire sprinklers, bringing the maximum number of stories for assembly use to three. The building is technically defined as a four story building and therefore, assembly use would not be permitted without a variance.

The appellant testified that the goal of the restoration project is to bring the Main Hall back to its original intended use, which is as a place for assembly. This requires an increase in the hazard index and that the building be completely sprinkled. As of this appeal, the building is only partially sprinkled. The appellant testified that he is asking for a time period of three years to obtain additional funding to sprinkle the entire building. The appellant also testified that the building would not be used as a place for assembly until the entire building was sprinkled. The Board clarified, however, that by granting the variance, it is required that the assembly room be completely sprinkled; however, due to a lack of funding, this could not be done right away. The Board then asked the Grafton Fire Department representative if the department would grant the appellant time to completely sprinkle the building if the Board members were to grant the variance. The Grafton Fire Department had no objections to this as long as the room is not used for assembly use until the building has been completely sprinkled. In addition, the appellee testified that he had no objections to the Board granting a variance.

Conclusion

A motion was made by Brian Gale and seconded by Jake Nunnemacher to grant a variance from Sections 302.3.1 and 504.2's requirement that a building for assembly use be a maximum of

three stories based on the condition that the four-story building not be used for assembly until a complete sprinkler system has been installed, tested and inspected. In addition, all existing fire systems must remain in working order. The motion unanimously passed with no objections from the fire department or the building department. The appellant's request for a variance is hereby granted.



Brian Gale

Alexander MacLeod

Doug Sample

Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to Superior Court in accordance with G.L. c.30A, §14 within 30 days of receipt of this decision.

DATED: June 30, 2011